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Idaho's Abortion Statute: EMTALA Exception Narrowed

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Last week, the US District Court for the District of Idaho entered another preliminary injunction prohibiting enforcement of Idaho's Total Abortion Ban (IC § 18-622) if the abortion is necessary to stabilize a pregnant woman under the Emergency Medical Treatment and Labor Act (EMTALA); however, unlike the prior injunction, the current injunction is limited to St. Luke's Health System hospitals and providers. The EMTALA exception does not currently apply to other hospitals in the state.

The Prior Statewide Injunction

As discussed more fully in our prior health law updates, in 2022, the United States Department of Justice (DOJ) sued Idaho to block enforcement of Idaho's criminal abortion statute in emergency situations covered by EMTALA. The district court initially sided with the DOJ, issuing a preliminary injunction prohibiting enforcement of Idaho's abortion ban if the abortion is necessary to stabilize the pregnant woman. Despite the state's appeal and a rather windy path up and down the federal appellate process, the preliminary injunction was ultimately upheld.

The Injunction in the St. Luke's Case

The status changed under the Trump Administration. Fearing that the new Administration would dismiss its lawsuit, St. Luke's Health System filed its on lawsuit to preserve the injunction. As St. Luke's anticipated, the DOJ did in fact dismiss its case on March 5, 2025, effectively nullifying the statewide injunction. On March 20, 2025, the district court issued its order in the St. Luke's case preserving the EMTALA exception to Idaho's criminal abortion statute, but because St. Luke's was the only hospital or system that brought the case, the district court limited the scope of the injunction to St. Luke's hospitals and physicians. Under the new injunction, St. Luke's hospitals and providers may perform an abortion if a pregnant woman comes to a St. Luke's hospital and the physician determines that the abortion "is ... i) necessary to 'stabilize' a patient presenting with an 'emergency medical condition' as required by EMTALA...." *St. Luke's Health Sys., Ltd. v. Labrador*, No. 1:25-cv-00015-BLW, at *67 (D. Idaho Mar. 20, 2025).

The Net Effect for Non-St. Luke's Providers

Because the preliminary injunction applies only to St. Luke's Health System and its medical providers, there is now a risk that Idaho may attempt to enforce its abortion law against physicians who perform an abortion in an emergency department despite EMTALA unless the abortion fits within in one of the following Idaho statutory exceptions:

First, the abortion is necessary to save the life of the mother. Specifically,

- (i) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman...; and
- (ii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman...

(IC 18-622). According to the Idaho Supreme Court's decision in *Planned Parenthood Great Northwest v. State*, the application of "life of the mother" exception "leaves wide room for the physician's 'good faith medical judgment' on whether the abortion was 'necessary to prevent the death of the pregnant woman' based on those facts known to the physician at that time." 171 Idaho 374, 445, 522 P.3d 1132, 1203 (2023). The Idaho Supreme Court affirmed that this is a subjective test, i.e., it depends on what the physician believed: "This is clearly a subjective standard, focusing on the particular physician's judgment. [T]he statute does not require objective certainty, or a particular level of immediacy, before the abortion can be "necessary" to save the woman's life. Instead, the statute uses broad language to allow for the "clinical judgment that physicians are routinely called upon to make for proper treatment of their patients." *Id.*

Second, in the wake of the 2024 amendments, the Idaho abortion statute does not prohibit:

- (a) The use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus;
- (b) The removal of a dead unborn child;
- (c) The removal of an ectopic or molar pregnancy; or
- (d) The treatment of a woman who is no longer pregnant.

(IC § 18-604(1)).

Third, an abortion may be performed during the first trimester in the case of rape or incest if certain additional conditions are satisfied. (IC 18-622).

As a practical matter, it seems unlikely that most prosecutors would pursue cases against physicians under EMTALA-related circumstances. This is primarily because (1) the 2024 amendments place the burden on the prosecutor to disprove the physician's good faith subjective intent, which may be difficult to do in cases where the treatment decision is supported by appropriate documentation, and (2) Judge Winmill has twice ruled that EMTALA likely preempts IC 18-622 in cases in which abortion is necessary to avoid serious health risks to the pregnant woman. While physicians are

not protected by an injunction, they could still invoke EMTALA preemption as a defense in EMTALA situations.

Nonetheless, there remains a risk of prosecution, and the success of the EMTALA preemption defense is not guaranteed. Notably, at least one other court has disagreed with Judge Winmill's reasoning, concluding that EMTALA does not preempt Texas's abortion ban.

Additionally, there is a risk of private lawsuits under Idaho's statute. Unlike the criminal statute, however, the private lawsuit statute generally allows physicians to assert a defense if the abortion was necessary for the health of the mother. Idaho Code §§ 18-8801, *et seq.*

"Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(IC 18-8801(5)).

For more information, see our previous Health Law Blog post: Idaho's Amended Abortion Laws: Summary and Updated FAQs.

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